

HOUSE BILL No. 1292

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2-22; IC 14-25-4.

Synopsis: DNR director authority over dewatering wells. Amends the law concerning the emergency regulation of ground water rights to: (1) include within the definition of "dewatering well" a water well or pump system that is used as part of a mining project to remove water from an area being mined; (2) authorize the director of the department of natural resources (director) to declare a ground water emergency when an investigation discloses that a dewatering well has caused a significant ground water withdrawal facility to fail to produce water in a quantity sufficient for the beneficial use for which the facility owner uses the water; and (3) provide that, in the case of a ground water emergency arising from the failure of a significant ground water withdrawal facility caused by a dewatering well, the timely and reasonable compensation that the director may order for the benefit of the facility owner is limited to: (A) restoring the affected significant ground water withdrawal facility to the facility's former water production capability; or (B) providing to the facility owner an alternative supply of water to replace the water lost through the facility's failure.

Effective: July 1, 2015.

Aylesworth

January 13, 2015, read first time and referred to Committee on Natural Resources.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1292

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-22 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 22. (a) **"Beneficial**
3 **use", for purposes of IC 14-25-4, has the meaning set forth in**
4 **IC 14-25-4-0.5.**

5 (b) "Beneficial use", for purposes of IC 14-25-7, has the meaning set
6 forth in IC 14-25-7-2.

7 SECTION 2. IC 14-25-4-0.5 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2015]: Sec. 0.5. **As used in this chapter, "beneficial use" means**
10 **the use of water for any useful and productive purpose. The term**
11 **includes the following uses:**

- 12 (1) **Domestic.**
13 (2) **Agricultural, including irrigation.**
14 (3) **Industrial.**
15 (4) **Commercial.**



- (5) Power generation.
- (6) Energy conversion.
- (7) Public water supply.
- (8) Waste assimilation.
- (9) Navigation.
- (10) Fish and wildlife.
- (11) Recreation.

SECTION 3. IC 14-25-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this chapter, "dewatering well" means:

- (1) a temporary water well that:
 - (1) ~~(A)~~ **(A)** is used as part of a construction project to remove water from a surface or subsurface area; and
 - (2) ~~(B)~~ **(B)** ceases to be used upon completion of the construction project or shortly after completion of the project; or
- (2) a water well or pump system that is used as part of a mining project to remove water from an area being mined.**

SECTION 4. IC 14-25-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) As used in this chapter and subject to ~~subsection~~ **subsections (b) and (c)**, "owner" includes the following:

- (1) The owner of an interest in property.
- (2) A person in possession of property.

(b) ~~For~~ **With respect to** a temporary dewatering well, "owner" means the person who authorized the construction that necessitated the installation of the dewatering well.

(c) With respect to a dewatering well used as part of a mining project to remove water from an area being mined, "owner" means the owner or operator of the mining project.

SECTION 5. IC 14-25-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. **(a)** Within twenty-four (24) hours after receiving a written complaint from the owner of a nonsignificant ground water withdrawal facility that a water well on property in the owner's possession has:

- (1) failed to furnish the well's normal supply of water; or
- (2) failed to furnish potable water;

the director shall cause an onsite investigation to be made.

(b) Within forty-eight (48) hours after receiving a written complaint from the owner of a significant ground water withdrawal facility that the significant ground water withdrawal facility has ceased to produce water in a quantity sufficient for the beneficial use for which the owner uses the water from the



1 **significant ground water withdrawal facility, the director shall**
 2 **cause an onsite investigation to be made.**

3 SECTION 6. IC 14-25-4-9 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. **(a)** If an
 5 investigation under section 8 **8(a)** of this chapter discloses:

6 (1) that the well has:

7 (A) failed to furnish the well's normal supply of water; or

8 (B) based upon reasonable evidence of prior potability
 9 supplied by the owner, failed to furnish potable water;

10 (2) that there has been a substantial lowering of the level of
 11 ground water in the area that has resulted in the failure of the well
 12 to:

13 (A) furnish the well's normal supply of water; or

14 (B) furnish potable water if the failure is caused by natural
 15 variations in the potability of water in the source aquifer;

16 (3) that the well and the well's equipment were functioning
 17 properly at the time of the failure;

18 (4) that the failure of the well was caused by the lowering of the
 19 ground water level in the area;

20 (5) that the lowering of the ground water level is such that the
 21 ground water level:

22 (A) exceeds normal seasonal water level fluctuations; and

23 (B) substantially impairs continued use of the ground water
 24 resource in the area; and

25 (6) that the lowering of the ground water level was caused by at
 26 least one (1) significant ground water withdrawal facility;

27 the director shall, by temporary order, declare a ground water
 28 emergency.

29 **(b) If an investigation under section 8(b) of this chapter**
 30 **discloses:**

31 **(1) that the significant ground water withdrawal facility has**
 32 **ceased to produce water in a quantity sufficient for the**
 33 **beneficial use for which the owner uses the water from the**
 34 **significant ground water withdrawal facility;**

35 **(2) that there has been a substantial lowering of the level of**
 36 **ground water in the area that has resulted in the failure of the**
 37 **significant ground water withdrawal facility to produce water**
 38 **in a quantity sufficient for the beneficial use for which the**
 39 **owner uses the water from the significant ground water**
 40 **withdrawal facility;**

41 **(3) that the significant ground water withdrawal facility was**
 42 **functioning properly at the time of the failure;**



(4) that the failure of the significant ground water withdrawal facility was caused by the lowering of the ground water level in the area;

(5) that the lowering of the ground water level is such that the ground water level:

(A) exceeds normal seasonal water level fluctuations; and

(B) substantially impairs continued use of the ground water resource in the area; and

(6) that the lowering of the ground water level was caused by at least one (1) dewatering well;

the director shall, by temporary order, declare a ground water emergency.

SECTION 7. IC 14-25-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. (a) Except as provided in subsection (b), the director may restrict the quantity of ground water that may be extracted from a significant ground water withdrawal facility when the director declares a ground water emergency under section **9(a)** or 10 of this chapter if:

(1) the:

(A) facility is reasonably believed to have caused the failure of the complainant's water well; and

(B) immediate temporary provision of an adequate supply of potable water required under sections 18(1) and 20(a) of this chapter is not carried out; or

(2) there is a reasonable belief that continued ground water withdrawals from the facility will exceed the recharge capability of the ground water resource of the area.

(b) If an operator of a significant ground water withdrawal facility withdraws water by a means other than pumping, the director may temporarily restrict the quantity of ground water that may be extracted only if the provisions of subsection (a)(1) have not been met.

SECTION 8. IC 14-25-4-14, AS AMENDED BY P.L.32-2011, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14. (a) A declaration of a ground water emergency under **section 9(a)** of this chapter is effective when a copy of a declaration is served under IC 4-21.5-3-1 upon a person who owns the significant ground water withdrawal facility that is reasonably believed to have caused the failure of the complainant's water well.

(b) A declaration of a ground water emergency under section 9(b) of this chapter is effective when a copy of the declaration is served under IC 4-21.5-3-1 upon a person who owns the dewatering well that is reasonably believed to have caused the



significant ground water withdrawal facility to fail to produce water in a quantity sufficient for the beneficial use for which the owner of the significant ground water withdrawal facility uses the water from the significant ground water withdrawal facility.

~~(b)~~ **(c)** As soon as possible after a declaration of a ground water emergency has been made, copies of the declaration shall be given to the newspapers of general circulation located in the affected county. The notification to newspapers required by this subsection is in addition to the minimum procedural duties required of the department under IC 4-21.5 and does not satisfy service of process by publication under IC 4-21.5-3-1(f).

~~(c)~~ **(d)** If the emergency requires action before service can be completed under subsection (a), oral notification in person by a representative of the department and authorized by the director is sufficient until service can be completed. Oral notification is effective for not more than ninety-six (96) hours.

SECTION 9. IC 14-25-4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 17. **(a)** The owner of a significant ground water withdrawal facility shall, subject to an order issued under section 20 of this chapter or under IC 13-2-2.5-11 (before its repeal), provide timely and reasonable compensation to persons who own nonsignificant ground water withdrawal facilities if there is failure or substantial impairment of those facilities as set forth in section 8 **9(a)** of this chapter if both of the following conditions exist:

(1) The failure or substantial impairment was caused by the ground water withdrawals of the significant ground water withdrawal facility.

(2) Either:

(A) the affected nonsignificant ground water withdrawal facility was in existence before January 1, 1986; or

(B) if constructed after December 31, 1985, the facility conforms to the rules of the department issued under section 13 of this chapter. Water wells constructed after December 31, 1985, but before the adoption of rules under this chapter must conform to the Recommended Guidelines of the department in Information Bulletin No. 3 published at 9 IR 1242.

(b) The owner of a dewatering well shall, subject to an order issued under section 20 of this chapter, provide timely and reasonable compensation to the owner of a significant ground water withdrawal facility that fails as described in section 9(b) of this chapter if both of the following conditions exist:

(1) The failure was caused by the ground water withdrawals



of the dewatering well.

(2) Either of the following applies:

(A) The significant ground water withdrawal facility was in existence before January 1, 1986.

(B) The significant ground water withdrawal facility:

(i) was constructed after December 31, 1985, and conforms to the rules of the department issued under section 13 of this chapter; or

(ii) was constructed after December 31, 1985, but before the adoption of rules under section 13 of this chapter, and conforms to the Recommended Guidelines of the department in Information Bulletin No. 3 published at 9 IR 1242.

SECTION 10. IC 14-25-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. (a) Timely and reasonable compensation under section ~~17~~ 17(a) of this chapter consists of and is limited to the following:

(1) The immediate temporary provision at the prior point of use of an adequate supply of potable water.

(2) Reimbursement of expenses reasonably incurred by the complainant to do the following:

(A) Obtain an immediate temporary provision at the prior point of use of an adequate supply of potable water.

(B) Provide timely and reasonable compensation as provided in subdivision (3)(A) and (3)(B).

(3) Either:

(A) the restoration of the affected nonsignificant ground water withdrawal facility to the facility's former relative capability;

(B) the permanent provision at the point of use of an alternative potable supply of equal quantity; or

(C) the permanent restriction or scheduling of the ground water withdrawals of the significant ground water withdrawal facility so that the affected water well continues to produce:

(i) the well's normal supply of water; or

(ii) the normal supply of potable water if the well normally furnishes potable water.

(b) Timely and reasonable compensation under section 17(b) of this chapter consists of and is limited to:

(1) restoring the affected significant ground water withdrawal facility to the facility's former relative capability; or

(2) providing to the owner of the significant ground water withdrawal facility an alternative supply of water to replace



1 **the water lost to the owner through the failure of the**
 2 **significant ground water withdrawal facility.**

3 SECTION 11. IC 14-25-4-19 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 19. The refusal of an
 5 owner of an affected nonsignificant ground water withdrawal facility
 6 **or significant ground water withdrawal facility** to accept timely and
 7 reasonable compensation is sufficient grounds for the department to
 8 terminate an order imposed on a responsible significant ground water
 9 withdrawal facility. An owner may request a hearing under IC 4-21.5
 10 if the owner does not believe compensation was timely or reasonable.

11 SECTION 12. IC 14-25-4-20 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 20. (a) Upon the
 13 declaration of a ground water emergency under section **9 9(a)** of this
 14 chapter, the director shall, by temporary order, require the immediate
 15 temporary provision at the prior point of use of an adequate supply of
 16 potable water.

17 **(b)** A temporary order under section 9 or 10 of this chapter remains
 18 in effect for ninety (90) days unless:

19 (1) terminated by the director before the expiration of ninety (90)
 20 days; or

21 (2) extended under IC 4-21.5-4-5(b) during the pendency of a
 22 proceeding under section 18(2) and 18(3) of this chapter.

23 ~~(b)~~ **(c)** The commission shall implement section 18(2) and 18(3) of
 24 this chapter by order. Before the commission enters an initial
 25 determination of the order, the department shall conduct an
 26 investigation and provide affected persons with an informal opportunity
 27 to contribute to the investigation. All final orders of the commission
 28 shall be issued under IC 4-21.5-3.

29 SECTION 13. IC 14-25-4-21 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 21. (a) An owner of a
 31 new:

32 **(1)** nonsignificant ground water withdrawal facility; **or**

33 **(2) significant ground water withdrawal facility;**

34 who desires to receive the protection of this chapter must construct the
 35 facility to conform to the rules adopted under section 13 of this chapter.

36 (b) Before a licensed water well drilling contractor or plumbing
 37 contractor drills and equips a ground water withdrawal facility for a
 38 person, the contractor must advise the person of the provisions of this
 39 chapter.

